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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK (BROOKLYN)

ASHLEIGH MASON, et al,

Plaintiffs,

v.

LUMBER LIQUIDATORS, INC.,

Defendant.

Case No. 1:17-cv-04780-RLM

Brooklyn, New York
October 19, 2021
12:34 p.m.

TRANSCRIPT OF TELEPHONIC CONFERENCE HEARING
BEFORE THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Call to order at 12:34 p.m.)

2 THE COURT: This is Judge Mann on the line. I'm
3 conducting a telephonic hearing in Mason, et al v. Lumber
4 Liquidators, Incorporated, 17CV4780. I hope everyone is safe
5 and healthy.

6 Who is on the line on behalf of the Plaintiffs?

7 MR. SWARTZ: Good afternoon, Your Honor. Justin
8 Swartz from Outten & Golden for the Plaintiffs.

9 THE COURT: Good afternoon. Anyone else?

10 MR. STEVENSON: Good afternoon, Your Honor, this is
11 J.R. Stevenson of Stevenson Marino on behalf of the Plaintiffs.
12 And my colleague Justin Marino is also on the phone as well.

13 MR. MARINO: Good afternoon.

14 THE COURT: Good afternoon. Anyone else for
15 Plaintiffs?

16 MR. STEVENSON: That's all, Your Honor.

17 THE COURT: All right, and who is on the line on
18 behalf of Defendant Lumber Liquidators?

19 MR. YAM: Good afternoon, Your Honor, this is Kevin
20 Yam from Littler Mendelson on behalf of Defendant.

21 THE COURT: Okay, and anyone else with you?

22 MR. YAM: It would just be myself today. Thank you.

23 THE COURT: All right, I had -- the purpose of my
24 setting up this telephonic hearing was to address the parties'
25 dispute with respect to the proposed notice for the non opt-in

1 New York Plaintiffs. I hope I got their labels correct.

2 And I wanted to hear from each side about why they
3 think I guess in the case of the Plaintiffs why this additional
4 information is appropriate?

5 MR. SWARTZ: Thank you, Your Honor. This is Justin
6 Swartz speaking.

7 THE COURT: And obviously, I'll give Defendants an
8 opportunity to respond.

9 MR. YAM: Thank you, Your Honor.

10 MR. SWARTZ: This is Justin Swartz.

11 THE COURT: All right, Mr. Swartz?

12 MR. SWARTZ: Yeah, thank you, Your Honor, I
13 appreciate the opportunity. I guess the first point we'd like
14 to make is that the purpose of FLSA notice is to give workers
15 whatever information is available that's accurate and could
16 help their decision in deciding whether to join a case.

17 Here, certainly accurate and certainly helpful to
18 workers to know that the case has settled of course pending
19 Court approval, but that the case had settled and that if they
20 joined the case, it's less likely than if this case hadn't
21 settled that they would have to participate in discovery, take
22 risks, have their name be in -- appear in transcripts, possibly
23 be deposed, all the things that often discourage workers from
24 joining -- many of the things that often discourage workers
25 from joining cases are not present here, or very unlikely to be

1 present if the settlement's approved.

2 And so, that's one reason. Because obviously, I
3 think certainly appropriate to let people know that the case
4 has settled.

5 Moreover, it would be at least in our view misleading
6 to just send a regular settlement notice -- a regular opt-in
7 notice to workers without giving them the information.

8 And as far as the heart of the dispute, the amount
9 that the case has settled for and the amount that somebody is
10 entitled to if the settlement is approved, again, is absolutely
11 material to their decision about whether to join the case,
12 would need to negotiate the settlement with Defendants. And if
13 the Court will remember, we negotiated a process where every
14 New York non opt-in would get paid.

15 And we were very pleased to have been able to
16 negotiate that because in, again in some cases, you know, as I
17 said before in some cases, not everybody gets paid because not
18 everybody returns a notice. Here, we had dispensed with that
19 provision and conferred a benefit on this group.

20 And we'd like to retain as much of that benefit as
21 possible in the new process that we've negotiated, you know,
22 pursuant to the Court's concerns about the procedural aspects
23 of where we get premiums negotiated.

24 So giving people this information will make it more
25 likely that they'll join the case because awards in this case

1 are substantial. We're not talking about small amounts and
2 somebody might look at it and throw the notice away.

3 And so, the fact that it makes it more likely that
4 people will join the case is our primary reason for seeking to
5 include information on the amount of the settlement.

6 Conversely, Defendants don't have a legitimate
7 interest in hiding any information from the Defendant -- from
8 the potential Plaintiffs. And they don't have any interest
9 in -- any legitimate interest in (indiscernible) for two
10 reasons.

11 One, the FLSA should be construed in (indiscernible)
12 friendly way.

13 Two, they negotiated -- initially negotiated a
14 settlement where everybody would participate, everybody would
15 get paid.

16 And now, if we're not providing all the information
17 we can to help people make this decision, it's likely that
18 fewer than 100 percent of the people would join and that would
19 be a windfall for the Defendants compared to what they
20 initially negotiated.

21 And then, I'll just address quickly Defendant's point
22 that there's some unfairness with respect to these workers
23 compared to other workers.

24 Sometimes that's what happens when you send notices
25 at various times in a case to different groups of workers.

1 There's more information available sometimes than others.

2 And I think that, you know, Defendant's concern for
3 the other workers who didn't get a settlement notice and didn't
4 get a notice telling them that they would recover money, rings
5 hollow and certainly doesn't -- certainly doesn't advise
6 withholding information from these workers that would help them
7 make their decision.

8 THE COURT: What are we -- you said that the amount
9 of money is significant. Can you give me information on that?
10 And we're talking about -- is it about 55 individuals if I
11 recall correctly?

12 MR. SWARTZ: I believe that's right. And I don't
13 have the information for these particular individuals, but the
14 average gross settlement award in this case is about \$20,000 if
15 the Court approves the case, the settlement.

16 So, you know, these are real numbers. We're not
17 talking about, you know, a settlement where people are getting
18 \$50 or a coupon for a hamburger.

19 I mean, these 20 -- you know, \$20,000 average. And
20 so, that's certainly something that people should know before
21 they decide whether to join the case or not.

22 THE COURT: All right, anything you want to add
23 before I hear from Mr. Yam?

24 MR. SWARTZ: Yeah, I guess the only last thing I'll
25 add is just -- and I'd just ask to respond to what Mr. Yam says

1 if there's a need to, but I do expect to Mr. Yam to raise the
2 legitimate point that there would be some need to
3 produce -- for the Defendant to produce data at least to be
4 able to allow us to estimate what the awards would be.

5 So that would certainly be a burden on the Defendant,
6 but I think it would be *de minimus* burden and certainly would
7 be outweighed by the benefit to the class to get this
8 information.

9 THE COURT: I assumed -- I'm surprised to hear that
10 because I assumed all this information had already been
11 provided and the notices were ready to go, but for the
12 determination as to whether or not the amount should be
13 included or not.

14 MR. SWARTZ: Uh --

15 MR. YAM: May I respond or do you want Mr. Swartz to
16 continue?

17 MR. SWARTZ: Sure. I don't mind -- Your Honor, I
18 don't mind if Mr. Yam responds while I --

19 THE COURT: Okay.

20 MR. SWARTZ: -- try to address his question.

21 THE COURT: All right, Mr. Yam?

22 MR. YAM: Okay, with respect to the data, that
23 information has already been produced, but I believe Mr. Swartz
24 wants it in a more clean format, where we itemize specifically
25 the exact amount of weeks and for the non-exempts, for the

1 exempt work weeks.

2 And we're happy to provide that at a stage where, you
3 know, where we're about to send this out via the class
4 administrator, but we haven't actually been in communications
5 with the class administrator yet with respect to providing this
6 information.

7 And, you know, the settlement agreement provides that
8 we provide it two weeks after this agreement has been
9 permanently approved.

10 Now with respect to the -- the only disputes in the
11 notice, the opt-in notice, is primarily the individualized
12 settlement allocation. And where it speaks to that is because
13 the proposed settlement has not been formally approved by this
14 Court yet.

15 And I believe Mr. Swartz is conflating two separate
16 documents. The -- Exhibit B is the official court notice of
17 settlement and the opt-in notice.

18 And as Your Honor noted in the prior hearing, you
19 know, you envisioned a resolution where we have the opt-in
20 notice go to the New York non opt-ins first. And then once
21 they have opted in, then the official Court notice goes out.

22 We believe that the individualized settlement
23 allocation should be in the official court notice of settlement
24 as opposed to the New York non opt-ins' opt-in notice.

25 And we believe that this New York's non opt-ins'

1 notice should really primarily follow the opt-in notice that
2 Your Honor granted approval of when you granted conditional
3 certification.

4 You know, in other words, you know, if the New York
5 non opt-ins were to receive the additional benefit of knowing
6 the estimated individualized settlement allocations before
7 opting in, it will be unfair to the rest of the opt-in
8 Plaintiffs who had already opted in, who didn't know what their
9 individualized settlement allocation were going to be, but they
10 opted in already.

11 So we believe that the same process should apply to
12 all opt-ins regardless of the stage of litigation that we're
13 currently in or what stage of litigation that the prior opt-ins
14 were currently in for fairness reasons.

15 MR. SWARTZ: Your Honor, may I respond?

16 THE COURT: All right. Yes.

17 MR. SWARTZ: Thank you, Your Honor. Essentially,
18 what the Defendants are arguing is that there's a whole group
19 of people who didn't know that there was a settlement because
20 there wasn't one yet, but who actually did opt-in to the case.

21 And that, therefore, another group of people should
22 not know how much their settlement allocation is in order to
23 help them decide whether to opt-in to the case.

24 It doesn't prejudice that first group one bit because
25 those folks are already in the case and they're already

1 collecting a settlement amount.

2 And so, I just think it's a false comparison.
3 There's no reason to deny folks information that would help
4 them decide whether to join the case.

5 And, again, if they -- a few New York non opt-ins
6 just get a notice like was sent out during contested
7 litigation, the opt-in rate's going to be much lower.

8 People -- we know that the opt-in rate in contested
9 litigation is much lower than the opt-in rate as when somebody
10 gets a notice that says how much money they're going to get.

11 And, again, the Defendants did not have a legitimate
12 interest in -- even though that they would save money, they
13 don't have a legitimate interest in limiting participation,
14 again, for two reasons.

15 One, because the FLSA's an important statute and
16 people should be given every opportunity and -- to make good
17 decisions about joining a case.

18 But two, because they negotiated a process initially,
19 which again, the Court suggested that we revise, but they
20 initiated a process where everybody was going to get paid.

21 And now, they're arguing that the notice should be
22 issued in such a way that fewer people would get paid than the
23 way that we're seeking.

24 THE COURT: I take it, it's been unspoken, but I take
25 it that any money that's left on the table if someone -- if one

1 of these non opt-in New York Plaintiffs declines for a second
2 time to opt-in, that money reverts back to the Defendant?

3 MR. SWARTZ: That's correct, Your Honor. And again,
4 we don't like reversionary processes if we can avoid them.
5 Sometimes we can't in order to get a deal done, but we prefer
6 not to.

7 In this case, again, we negotiated a process where a
8 check would go out to everybody. And the reversion, if any,
9 would be miniscule because people cash checks.

10 And so, changing the process to a process where
11 people have to make a decision, take an action and then, later
12 get a check will decrease participation, but I understand the
13 Court's reasons for suggesting that and urging that, but that
14 would decrease their participation in itself.

15 I don't think in this case especially it's the right
16 thing to do, too, without any information that could keep
17 participation at a very high level.

18 THE COURT: Well --

19 MR. YAM: Your Honor?

20 THE COURT: -- maybe the money shouldn't -- make it
21 shouldn't revert back. Maybe it should go to those who opted
22 in originally, because you are talking about -- you're saying,
23 you know, now there's more information available.

24 So shouldn't this group have it when during the time
25 that the first wave of notices went out, that information was

1 available?

2 The fact of the matter is for I assume a large
3 proportion of these individuals, they got notice in the first
4 wave.

5 And without that information, they decided for
6 whatever reason, assuming they got it because they hadn't
7 moved, that they were not going to opt-in. It wasn't worth it
8 to them.

9 So they are now being given a second chance. So
10 where -- it -- to say that, well, this group is in a different
11 position than the earlier group is because now there's a
12 settlement and we know the amount, many of them were in that
13 first group and chose not to opt-in when they didn't have the
14 numbers.

15 MR. SWARTZ: That's correct, Your Honor. And I guess
16 it's just a matter of orientation. I mean, we -- you know, we
17 see these New York non opt-ins as a -- in the sense a fresh
18 group of people.

19 I mean, yes, they chose not to opt-in when they got a
20 settlement notice that says that there's going to be a
21 litigation and, you know, just the possibility of them
22 participating and spending their time.

23 But you know, these are workers who didn't make a lot
24 of money and were -- they have the opportunity to get \$20,000
25 on the average per person.

1 And I just -- you know, personally and you know as
2 Plaintiffs' team, we feel like it's very important to us to let
3 them know that we've negotiated this settlement for them, that
4 they can take advantage of and how much they're going to get.

5 I understand that other people didn't have that
6 opportunity. And -- but that shouldn't take away from these
7 people getting that opportunity.

8 And as far as where the money goes, I mean, yes, it
9 would be great if we negotiated a settlement where any money
10 that was not claimed by the New York non opt-ins was somehow
11 divided up among other people, but you know, two things about
12 that.

13 One, we didn't negotiate that settlement. And we
14 didn't think that -- we didn't think that it was a problem
15 because there was going to be such a miniscule reversion anyway
16 that it wasn't worth us blowing up a settlement over that term.

17 Again, because you know, we thought the checks were
18 going to go out the door. 99 or 95 percent of the checks are
19 usually cashed in these cases. And so, it would have been such
20 a small amount that it was just not worth making an issue of
21 that term.

22 Now depending on what the Court rules on
23 this -- well, without regard to what the Court rules on this
24 notice, the participation is going to be lower to some extent.
25 I mean, I hope it's not much lower, but it might be.

1 And depending on what the Court rules in this
2 dispute, that will probably affect the participation rate as
3 well.

4 And the fact is we've, you know, we feel like the
5 amount that we negotiated for the rest of the cause members,
6 the people other than the New York non-opt-ins is good, fair,
7 very defensible. In fact, we're very proud of the amount that
8 we negotiated for them. \$20,000 average is a lot.

9 And you know from our perspective, we prefer that
10 more people get to participate and more people do participate
11 and get their \$20,000 average than bumping up everybody else's
12 settlement share by a small amount.

13 It means more to us for that to happen and that
14 comports with our view of what our job is as lawyers for a
15 class and a potential class.

16 THE COURT: Well, you indicated that you
17 would -- your preference would be that the unclaimed funds
18 would not revert to the Defendants, but that's not what was
19 negotiated.

20 When you talk about the negotiations, are you talking
21 about the negotiations over the last couple of months? Because
22 prior to that time, as I think both of you have pointed out,
23 you contemplated that the checks would just be sent to these
24 people regardless -- they wouldn't have to opt in. The checks
25 would just be sent to them. So the only unclaimed funds

1 presumably would be if someone had moved and there was no
2 forwarding address.

3 MR. SWARTZ: That's correct or if somebody just for
4 whatever reason -- and from time to time, people don't cash a
5 check for -- some people don't believe in class actions or they
6 don't believe that they're entitled to money, so they don't
7 cash the check.

8 But yes, you're correct, and we expected that, you
9 know, 90 some -- possibly in the high 90's percentage of these
10 folks would have cashed the check.

11 And so, yes, some -- when I said that we negotiated a
12 process where there would be a reversion for unclaimed funds, I
13 was talking about the initial negotiation back when we mediated
14 the case.

15 And our thinking again was, okay, well, we'd rather
16 not have a reversion, but this is not something to either trade
17 something else for or blow up the deal because this reversion's
18 going to be miniscule.

19 We didn't revisit that term when we went back and
20 negotiated this revised settlement pursuant to the Court's
21 instructions at the last conference.

22 And I guess I'll just leave it at that. I don't know
23 that -- I don't know whether we'd be -- we would have been
24 successful in doing that or not. It's something for the
25 Defendants to address.

1 Certainly if the Defendants would give up their right
2 to any reversion, I mean, first of all, they probably would no
3 longer care what it said in the notice.

4 Maybe that that would resolve this dispute, but I'm
5 not sure that they're willing to do that, but that would be a
6 question for Mr. Yam and his client.

7 THE COURT: Mr. Yam?

8 MR. YAM: Your Honor, may I respond?

9 THE COURT: Yes.

10 MR. YAM: So in the scenario that Mr. Swartz
11 proposed, you know, we're talking about that the settlement
12 checks being sent out, in that scenario, the proposed
13 settlement would have already been approved by the Court.

14 But in this case, you know, with the New York non
15 opt-in -- non opt-ins' notice going out, you know, this
16 proposed settlement hadn't been formally approved or even
17 preliminarily approved yet.

18 So, you know, we want to, you know, address these
19 issues, you know, in order and not the cart before the horse.
20 So we would like to, you know, first have a definitive amount
21 of opt-ins in this case first and then have -- go through the
22 process with the Court in a fairness hearing.

23 And then, once these are -- everything's ruled by the
24 Court as fair and reasonable, then to have these checks go out
25 as Your Honor had mentioned at the prior hearing.

1 So we just want to follow the Court's orders. And
2 that obviously was case law in this circuit in, you know, well,
3 it's been -- that Your Honor raised in the Allied Security case
4 and subsequent cases.

5 I actually have another case with Judge Bulsara and
6 this seems to be the order that he's following, as well as a
7 lot of other magistrate judges and district judges.

8 So we just want to make sure that, you know, all the
9 Plaintiffs' reasons are addressed. And as Your Honor noted,
10 you know, a majority -- I don't have the exact number, but
11 there's probably 53 New York non opt-ins that's left over.

12 And I don't know the exact percentage, but more than
13 half probably have probably received the first opt-in notice,
14 and you know, for whatever reason, they did not join at that
15 time. So to answer the question -- issue that Mr. Swartz
16 raised.

17 MR. SWARTZ: Your Honor, this is --

18 THE COURT: Well --

19 MR. SWARTZ: -- Justin Swartz. I'm sorry, go ahead.

20 THE COURT: Go ahead.

21 MR. SWARTZ: I'm sorry --

22 THE COURT: No, you can go first.

23 MR. SWARTZ: -- I was just going to say that -- yeah,
24 thank you, I appreciate it. I was just going to say two
25 things.

1 One, that the fact that past people haven't received
2 notice at all is significant. And I think that addresses at
3 least one of the points and --

4 MR. YAM: I don't know the exact number, so don't
5 quote me on that. I don't know the exact number of
6 (indiscernible).

7 MR. SWARTZ: I understand. I'm not --

8 MR. YAM: Yeah.

9 MR. SWARTZ: -- I'm not holding the Defendants to
10 that, but you know, some number close to that. And it doesn't
11 make sense to send two different notices, one to somebody who
12 hadn't had a chance to join and one who had -- somebody who had
13 a chance to join with different levels of information in it.

14 But the second of all, you know, the fact that --

15 THE COURT: Can I just -- can I just ask one thing?

16 MR. SWARTZ: Of course.

17 THE COURT: The ones who you say and whether it's
18 half or less than half, who haven't received notice at all, is
19 that because those are for the most part, those are more recent
20 hires?

21 MR. YAM: No, it's actually earlier hires. So
22 the -- this date, the period that we're contemplating for the
23 New York non opt-ins goes back to 2011.

24 THE COURT: And the first notice that went out to New
25 York opt-ins, it went back to when?

1 MR. MARINO: 2014.

2 MR. YAM: Yeah, 2014, three years prior to -- the
3 complaint was filed sometime in 2017.

4 THE COURT: And just remind me, because I've been
5 away from this case for two months. I know you folks haven't,
6 so it's fresh in your mind, but for those opt-ins from New York
7 who opted in when the notice period went back to 2014, are
8 there -- are they getting credit?

9 Is the formula for what they are receiving under the
10 settlement agreement, are they getting credited for the weeks'
11 work that pre-date 2014?

12 MR. SWARTZ: Mr. Stevenson?

13 MR. STEVENSON: Yes.

14 MR. SWARTZ: Do you want to take that?

15 THE COURT: Please identify yourself.

16 MR. STEVENSON: Yes, Your Honor, this is J.R.
17 Stevenson on behalf of Plaintiffs. And yes, they are --

18 THE COURT: Yeah.

19 MR. STEVENSON: -- receiving credit for the time
20 period going back to 2011 or where they began to work for the
21 Defendant.

22 THE COURT: So they are not -- this new group is not
23 getting the benefit of a calculation that takes into account
24 periods of time for which the original opt-ins did not get that
25 benefit?

1 MR. STEVENSON: That's correct, Your Honor.

2 THE COURT: So to the extent that the notice is being
3 sent out to individuals who would have not have received the
4 notice, the first notice that went out, it's because they are
5 not members of a FLSA collective?

6 MR. MARINO: That's true for many of us.

7 MR. SWARTZ: That's right.

8 THE COURT: Who just said that?

9 MR. MARINO: Excuse me, Justin Marino.

10 THE COURT: Then, why are they getting an opt-in
11 notice? I understand that the Defendant wants releases from
12 them, but they are not part of a FLSA collective.

13 And that just highlights the concern that I had, that
14 what we're really dealing with here is an end run around Rule
15 23.

16 These are not members of the collective because their
17 claims, for those who did not receive the earlier notice, they
18 don't have any FLSA claims.

19 MR. STEVENSON: Your Honor, this is J.R. Stevenson on
20 behalf of Plaintiffs. I think that they are members of an FLSA
21 collective. I think the claims arise for the same reason that
22 the other individuals do under the FLSA.

23 I think that the Defendant has agreed to waive the
24 statute of limitations solely in the event that there is a
25 settlement to these individuals to seek, you know, to seek

1 relief on our behalf.

2 But I would think that there -- they are members of
3 an FLSA collective. The Defendant would just normally have an
4 affirmative defense of the statute of limitations.

5 MR. MARINO: And, Your Honor, this is Justin Marino.
6 If I can add to that? A Rule 23 settlement typically envisions
7 the elimination of claims should those people fail to opt-out.

8 In this case, the release of claims only occurs in
9 the event that they affirmatively elect to participate in the
10 lawsuit. So that is the key distinguishing feature.

11 THE COURT: Mr. Yam, is the Defendant waiving the
12 statute of limitations, the FLSA statute of limitations on
13 these opt-ins?

14 MR. YAM: I'm sorry, do you hear me?

15 THE COURT: I didn't hear you. I don't know if you
16 were on mute.

17 MR. YAM: Oh, yeah, I must have been mute. Can you
18 repeat that question again? I'm sorry.

19 THE COURT: Yes, the question was -- I stated my view
20 that from what I'm hearing, to the extent that an individual is
21 going to -- a New York employee or former employee, I guess it
22 would be a former employee, is receiving a notice for the first
23 time because their claims arose in the period between 2011 and
24 2014.

25 I stated that, therefore, they don't have any FLSA

1 claims and they're really not members of a FLSA collective.

2 And I believe it was Mr. Stevenson or Mr. Swartz said
3 that's not the case. Well, one said -- one first acknowledged
4 that they're not members of the FLSA collective.

5 And then, another said they are, but the Defendant
6 has agreed to waive the statute of limitations, the FLSA
7 statute of limitations.

8 MR. YAM: Okay, got that.

9 THE COURT: So I'm asking.

10 MR. YAM: Yes. So in answer to --

11 THE COURT: So I'm asking --

12 MR. YAM: Sorry, go ahead.

13 THE COURT: Go ahead. No, if you understand the
14 question --

15 MR. YAM: Yeah.

16 THE COURT: -- go ahead and answer it.

17 MR. YAM: Yes, I understand your question now. So
18 the answer is not is not -- is, no, we do not waive the statute
19 of limitations, but we did agree to toll the statute of
20 limitations through a series of stipulations and even our
21 memorandum of understanding until the settlement papers were
22 filed.

23 Now I don't recall the exact tolling, how much time
24 has been tolled, but even in Your Honor's May 3rd, 2019 order,
25 you put in some footnotes, you know, how much time was tolled.

1 And subsequently after that, because the parties were
2 contemplating settlement, we entered into a series of
3 stipulations to toll the statute of limitations. So the exact
4 amount of time that was tolled, I do not recall.

5 THE COURT: Well, since the first notice went out --
6 that went out extended back to 2014, and I believe that notice
7 went out in around 2019, if I recall correctly, so I did take
8 into account tolling. And it brought it back to 2014.

9 But now, we're talking about claims going back to
10 2011. So I don't see how any tolling agreements would bring it
11 back before 2014.

12 MR. SWARTZ: Your Honor, what there -- this is Justin
13 Swartz, if I may, a couple things. One, what these folks are
14 releasing, it goes back to 2011, as you mentioned is not
15 just -- is not just their FLSA claims, but it's their state law
16 claims as well. And those state law remedies overlap almost
17 identically with any FLSA remedies.

18 And so, it's true that some of them may be releasing
19 state law and remedies that reach farther back than the longest
20 possible reach back for their FLSA remedies.

21 But, again, these are -- I just -- to take a step
22 back from our perspective and I -- in this case, it aligns with
23 Defendant's perspective.

24 These are -- this is a benefit for the workers, these
25 people to be able to recover for a longer period than they

1 would likely be able to recover for a litigant.

2 And I say likely because they're definitely equitable
3 tolling arguments that they could raise. And they could raise
4 those on an individual basis based on the case law with respect
5 to equitable tolling.

6 There could have been something the Defendant did to
7 obscure the violations something -- I mean, there's a whole lot
8 of case law on equitable tolling.

9 But -- and so, it's not -- these claims aren't
10 illusory. I mean, they're probably not the strongest claims.
11 They're probably weaker claims for being able to recover on the
12 FLSA going back a longer period, but they still exist and it's
13 still something they're releasing. And the parties have
14 negotiated a settlement where they get value for that.

15 In addition, they're releasing under state law
16 claims, which again, overlap almost identically with the FLSA
17 remedies.

18 And, you know, with respect to Rule 23, I don't want
19 to just leave that hanging, I mean, this is a discussion that
20 we asked the Court on the last conference as well.

21 I know that the Court has characterized this is an
22 end run on around Rule 23, but to what negative effect? I
23 mean, that's -- the way that we look at it is that
24 these -- it's just like Mr. Marino said, these workers are
25 in -- we've negotiated a way that these workers would be in the

1 best possible situation, which is they don't release anything
2 unless they join the case.

3 And we didn't do a Rule 23 settlement because usually
4 courts look favorably on a settlement that give the workers the
5 choice of either releasing nothing and not participating or
6 releasing their claims and participating.

7 So, a worker, for instance, who doesn't get the
8 notice or a notice is misplaced, doesn't really say anything.
9 They're just not joining.

10 They won't -- they're not going to be harmed by the
11 wall to wall Rule 23 release. The -- by operation of law,
12 they're only releasing claims that they joined.

13 And so, again, this is -- in this case, this is
14 consistent with Defendant interest, which the Court mentioned
15 and finality and peace in getting a release for their -- you
16 know, Defendant's paying money to settle this case, you know,
17 very good money in our view.

18 And they do have an interest. And they've stated
19 that interest to us. And it's obvious an interest in releasing
20 their -- getting releases for these folks that go all the way
21 back as far as they could possibly assert a claim even if it's
22 a claim based on equitable tolling. And so, the interests are
23 aligned here. And there's no harm to anybody.

24 There's no harm to -- I know usually Rule 23, you
25 know, Rule 23 protects defendants in a way because it gives

1 them finality, but it doesn't protect plaintiffs because it
2 releases claims for people who don't even -- didn't -- don't
3 get a notice or go do anything.

4 Here, you know, these workers are protected. They
5 get to make the choice, release their claims and participate.
6 Or if they do nothing, they don't release anything.

7 And so, I mean, I get the -- I certainly get the
8 technical procedural point that this could also be done through
9 a Rule 23 settlement, but it's better for everybody for it not
10 to be here at least in our view.

11 THE COURT: Well, it's not just technical, because
12 I'm taking an overview. And the question is whether or
13 not -- it's -- well, you say no harm to everyone except that
14 these individuals are getting preferential treatment over and
15 above what the earlier opt-ins got. And that is a concern to
16 the Court.

17 You know, you said, for example, that perhaps they're
18 didn't join because they didn't want to have to provide any
19 discovery.

20 Well, the earlier opt-ins decided that they were
21 going to take on that burden if they had to. And except for
22 the named Plaintiffs, they didn't get any additional
23 compensation either for providing discovery or for assuming the
24 risk that they would have to provide discovery.

25 And now the Johnny-come-latelys are being given a

1 second chance, at least some of them are. And others are being
2 given a chance who did not qualify, were not eligible for
3 opt-in notices in the first round. And they're being given
4 this opportunity. So they are advantaged over the earlier
5 opt-ins.

6 And this is not the only instance in this case in
7 which the Court, you know, taking a bird's eye view, not having
8 been involved in the weeds with these folks, looked at certain
9 aspects of the settlement and said I think that some of these
10 individuals are being overcompensated relative to others.

11 And the parties said that they would go back and fix
12 that. And before we concluded today, I do want to talk with
13 you about the revised settlement agreement because I'd like to
14 see a redline or blacklined copy.

15 And I'd also -- and that can be sent to me through
16 chamber's email account, but I'd also like a -- an explanation
17 of what's been changed and how that addresses the issues that
18 the Court raised.

19 Because I looked very quickly, but none of that has
20 been explained to the Court or flagged for the Court. So I
21 really want that addressed.

22 But in terms of -- I'd like to ask Mr. Yam a
23 question. Let's put aside the monetary benefit to the
24 Defendant.

25 Let's assume no reversion to the Defendant if a check

1 is not cashed. Would -- what would the Defendant's position be
2 with respect to the language in the notice?

3 MR. YAM: About reversion? What would happen to the
4 money if they -- if the person didn't opt-in?

5 THE COURT: No, no, about whether or not the monetary
6 amount should be included?

7 MR. YAM: Our whole point is that we do not think
8 that a monetary amount should be included in the court-
9 authorized notice to the opt-in -- New York non opt-ins.

10 THE COURT: Well, I'm trying to tease out should
11 that -- should the money that is left on the table, should that
12 go to those who opted in earlier?

13 MR. YAM: No, and I also have to bring that back to
14 my client. I don't have any authority to say where it should
15 go because the contemplated settlement agreement is that, you
16 know, the money that's not -- that opt-ins do not take, it goes
17 back to Lumber Liquidators. So, anything otherwise, I would
18 have to confer with my client.

19 THE COURT: Well, isn't it true that the initial
20 settlement discussions, these individuals that we're now
21 talking about, the 53 or 55 --

22 MR. YAM: Uh-huh.

23 THE COURT: -- they were not going to have to opt-in.
24 They were just going to have checks sent to them?

25 MR. YAM: Yes, but that's after the Court has

1 approved of the settlement. And what we're doing now is we're
2 sending out opt-in notices first, before a proposed settlement
3 has been approved by the Court.

4 So the main problem with Defendant -- with the
5 current -- because the current dispute is that the agreement
6 has not been approved.

7 You know, and we're sending out opt-in notices to the
8 collective or purported collective or class with a number in
9 there. And that's something we're not comfortable with.

10 If the Court had approved it, and you know, this is
11 this final number that goes out to the collective, then we'll
12 be fine with that.

13 Because you know, I have a couple of cases before
14 Magistrate Judge Bulsara. And I believe in most of these
15 cases, you know, we have the opt-in notice go out first, and
16 then, people join.

17 And then, the Court holds a fairness hearing. And
18 then, once the fairness hearing, you know, at the fairness
19 hearing when these -- when the final settlement amount is
20 approved, then the checks go out.

21 So we just want to -- you know, as Your Honor pointed
22 out the last court conference, we just want to make sure that
23 you know, the process is correct.

24 And you know, based on what we have before us right
25 now is Your Honor wants the opt-in notice to go out first, but

1 we think it's premature to include a settlement, an
2 individualized settlement amount in there if it hasn't even
3 been approved by the Court yet.

4 THE COURT: What is the most recent case you have
5 with Judge Bulsara in which this kind of issue came up?

6 MR. YAM: The most recent case I have is Hobbs v.
7 UPS.

8 THE COURT: And do you have the docket number?

9 MR. YAM: But it's not been approved yet. It's just
10 we're going through the process, but we went through like four
11 settlement conferences and we were discussing the Allied
12 Security case. And we're just going through, you know, the
13 process.

14 You know, it seems like there's this process we have
15 to follow where, you know, the opt-in notice goes out first.
16 Then there's the fairness hearing.

17 And once the fairness hearing is good, then the
18 checks go out because I believe in the Allied Security case,
19 you know, the checks had gone -- the parties had contemplated
20 the checks to go out, you know, as we had originally
21 contemplated in this case.

22 THE COURT: Well, remind me, was that after there was
23 a preliminary approval, before there was final approval?

24 MR. SWARTZ: Your Honor, do you mean in this case or?

25 THE COURT: Hello?

1 MR. SWARTZ: -- in the case?

2 THE COURT: In --

3 MR. SWARTZ: Your Honor, do you mean in this case?

4 This is Justin Swartz.

5 THE COURT: In this case, yes.

6 MR. SWARTZ: Yes, in this case, the process that we
7 initially negotiated was that the Court would approve the
8 settlement.

9 And then, we would send out checks to the New York
10 non opt-ins. And those checks would also act as opt-in forms,
11 when they signed them, they would act as opt-in forms and
12 releases as well.

13 And so, they would --

14 THE COURT: So what was contemplated? With the final
15 approval and I -- this is -- a final approval by the Court and
16 at that point, individuals would be opting into a closed case?

17 MR. SWARTZ: Well, the Court wouldn't -- we didn't
18 contemplate that the Court would close the case. We
19 contemplated the Court would approve the settlement, allow for
20 people to join it, for the Defendants to file the opt-in forms,
21 and then, eventually close the case.

22 So the Court wouldn't have to close the case. When
23 it approved the settlement, it would leave it open to allow the
24 opt-in forms to be filed.

25 Where we are now, Your Honor, is that --

1 THE COURT: The --

2 MR. SWARTZ: Yeah, I'm sorry, go ahead.

3 THE COURT: No, go ahead.

4 MR. SWARTZ: I'm sorry, I was just saying that where
5 we are now is that the -- if the notice goes out to these New
6 York non opt-ins, the notice -- I mean, to address Mr. Yam's
7 point, the notice would certainly be very clear that the
8 settlement has not been approved, that this is a settlement
9 that the parties negotiated, that if the settlement is not
10 approved, they would not be entitled to the amount on their
11 notice, and that there would be litigation, that it would just
12 give them an accurate picture without obscuring any facts at
13 all.

14 This is why you should join the case. You should
15 join this case because it's possible that you're going to get
16 this amount of money.

17 And this is a significant amount of money that could
18 be important to you, that's probably important to you and could
19 certainly help your life. And that's what --

20 THE COURT: Are these kind of people --

21 MR. SWARTZ: Yes?

22 THE COURT: -- are they being given preferential
23 treatment over those who previously opted in?

24 MR. SWARTZ: In a way, yes, Your Honor, but to
25 nobody's detriment. And that's -- I think that's what's

1 important here.

2 I understand the Court's point. I understand Mr.
3 Yam's point that other people didn't have this information, but
4 those other people are not being disadvantaged at all. They're
5 actually in the case.

6 And they're getting the settlement share. I mean,
7 the fact that there's more information available now is
8 certainly better for the New York non opt-ins but -- and
9 they're lucky because of that.

10 Now they have more information. They can join a case
11 that is settled pending approval. And that's a much better
12 position to be in than other people who joined the case, but
13 not to anybody's detriment.

14 THE COURT: Well --

15 MR. SWARTZ: So there's not being money being taken
16 away from those other people or anything like that.

17 THE COURT: --- except without this further wave of
18 payments to these other individuals, perhaps the allocation to
19 those who joined earlier could have been -- it could have
20 resulted in -- it could have been negotiated that they would
21 get more money.

22 MR. SWARTZ: We would -- we weren't able to do that.
23 I mean, the -- you know, the negotiation was based on a certain
24 number of people, certain number of work weeks.

25 I mean, and these negotiations take a lot of twists

1 and turns. And there's give and take in a number of ways
2 monetary and nonmonetary, but I'm quite sure that if it hadn't
3 been for the fact that we were including payment to the New
4 York non opt-ins, that we would have not been able to negotiate
5 this high settlement amount.

6 I mean, Defendants are -- I mean, it's not 1 to 1.
7 It's not like, you know, we could point to a juncture in the
8 negotiation where we added money for those folks or anything
9 like that.

10 This is not how these negotiations work, but we got
11 more value than we would have gotten had these people not been
12 part of the negotiation.

13 If we weren't providing releases, which has value to
14 these -- to the Defendants and to the detriment of the workers
15 whether -- you know, whether it's a small detriment because the
16 claims are weak or a large detriment because they're strong, we
17 wouldn't have been able to get as much money.

18 So I don't think it's accurate to say that it's
19 actually taking money away from anybody. It's not. It added
20 money to the pot and these people are getting their share.

21 The notice can very clearly explain to them that
22 they're not definitely getting this money, that it's pending
23 Court approval. And we can state in that lay person's terms
24 and make it very clear.

25 The difference between the New York non opt-ins and

1 the non opt-ins for the rest of the country is that the New
2 York non opt-ins have a six-year statute of limitations under
3 this under the -- under another law that covers them, the New
4 York Labor Law. And that's what it takes us back to, you know,
5 the point that we're talking about before.

6 THE COURT: Mr. Yam, what is the first name of the
7 Plaintiff in Hobbs or what is the docket number of that case?

8 MR. YAM: It's Jerry Hobbs. But in that case, it was
9 a class collective action settlement. In our case, it's
10 collective opt-in only.

11 So it's a little different, but the mechanism of this
12 procedure, you know, the parties in that case went, you know,
13 went to several mediations and settlement conferences with
14 Magistrate Bulsara.

15 So my understanding -- I mean, so Hobbs wouldn't be
16 on all force with our current case. What -- I just suggested
17 that and another case, Morales v. Rochdale, which I'm not
18 a -- I wasn't counsel in that case.

19 But my understanding of what judges are doing in
20 these cases right now is there's a clear distinction between a
21 FLSA-only case versus FLSA/New York Labor Law class collection
22 of action settlement case.

23 And it depends on what the particular claim in or
24 opt-in or class member is doing, whether they're opting in and
25 what the releases are.

1 It really affects what the court is going to rule on
2 what the procedure is going to be. It seems like this is
3 something that Magistrate Bulsara has outlined in many cases.

4 And I just suggested that because it seems like we're
5 running into this issue here where, you know, Your Honor's
6 concerned that this is only an FLSA opt-in only class, but in
7 the Hobbs case that I was counsel in and in the Morales v.
8 Rochdale Village case, FLSA opt-in members do release all the
9 New York Labor Law claims and opt-in claims.

10 So, provided that they are the FL -- you know, their
11 FLSA claims are still live, and you know, they can opt-in to
12 the case, and release all New York Labor Law claims.

13 And this case, which started in -- sometime in 2017,
14 provided they have valid New York Labor Law claims, they would
15 be releasing, you know, claims dating back to 2011 as well if
16 they opted in to the FLSA action.

17 So that -- I wasn't suggesting that (indiscernible).

18 THE COURT: What is -- well, I asked about Hobbs
19 because you had cited it. If it's not relevant because it's
20 also a class action, I won't look into it.

21 The Morales case, is that also a hybrid settlement?

22 MR. YAM: Yes. Yes, that's also hybrid settlement.
23 So it's not on all force, but the mechanism Magistrate Judge
24 Bulsara does lay out in the cases.

25 So it's not -- I cited because it's not on all force,

1 but because we're going through this procedural discussion, I
2 just cited it because Magistrate Judge Bulsara does go into
3 varied detail about what happens procedurally depending on what
4 claims this opt-in claim is or this class member has.

5 THE COURT: Well, in effect, the New York -- those
6 who are part of the collective of the New York, who are New
7 York employees or former employees are, in effect, they're
8 being credited for time outside the FLSA statute of
9 limitations. And they're being compensated for it.

10 So it is in that sense a pseudo-hybrid resolution.
11 What is the docket number in Morales or the first name of the
12 Plaintiff?

13 MR. YAM: Just give me one second. I don't have on
14 top -- on top of my head what the -- just give me one second.
15 Let me just pull it real quick.

16 THE COURT: All right.

17 MR. SWARTZ: Your Honor, this is Justin Swartz.
18 While Mr. Yam's looking for that, can I address the point the
19 Court just made?

20 THE COURT: Well, he -- I'd like him to be able to
21 hear. So --

22 MR. SWARTZ: Okay, I'm sorry.

23 THE COURT: -- why don't you --

24 MR. SWARTZ: Yeah, you're right. I'll wait. I'm
25 sorry.

1 MR. YAM: Yes, Your Honor, so it's Lynica, L-Y-N-I-C-
2 A. Last name is Morales, M-O-R-A-L-E-S v. Rochdale --

3 THE COURT: And the docket number?

4 MR. YAM: Docket number is 15-cv-502-SJB.

5 THE COURT: Okay, thank you.

6 All right, Mr. Swartz?

7 MR. SWARTZ: Yeah, thank you, Your Honor. I -- we
8 respectfully disagree with characterizing the case as a hybrid
9 case or a pseudo-hybrid case.

10 It's not, because especially under the procedure that
11 we negotiated, each person who's going to participate in this
12 case is an actual plaintiff in the case, a party plaintiff,
13 which is, you know, what happens when you join an FLSA
14 collective.

15 So you're not an absent class member. You're not
16 being represented by anybody in a sense that you're present,
17 you're here.

18 And so, each person in this case then will be signing
19 a document, which will then release all of the claims that they
20 have with respect to labor practices.

21 And so, it's not -- I understand why it seems like it
22 resembles a hybrid case, but it's not, because it doesn't
23 require the operation of Rule 23 to allow these folks to
24 release their New York Labor Law claims. They're doing it
25 themselves.

1 They're here in the case or they will be once they
2 opt-in. They're here, and then, they're releasing those
3 claims. It's not being done to them as absent class members.
4 There's nothing done by operation of any procedural rule.
5 They're actually plaintiffs here in the case who are doing
6 that.

7 That's why these -- and again, that's why we prefer
8 to negotiate settlements like this if we can, because we're
9 only releasing for -- people are only releasing claims they
10 know they're releasing. They're actually doing it
11 affirmatively and they're getting paid for that. If they don't
12 do it, they're not getting paid.

13 And that release doesn't just cover FLSA claims, but
14 it covers New York Labor Law claims that arise from the same
15 facts.

16 And so, you know respectfully, I mean, I think it's
17 important --- an important distinction. That's why I raised
18 it.

19 I mean, that's -- and I think it underlies
20 the -- pretty much the whole discussion we've been having over
21 these two court conferences. These folks are going to opt-in.
22 They're going to then make the affirmative decision to release
23 these claims.

24 And as far as what they should know before they opt-
25 in, you know, again, it seems to me that they should know

1 exactly what they're opting in to, and why, and have all the
2 information they can have to make that decision.

3 I will offer a compromise, which is something that we
4 discussed with the Defendant. I -- instead of providing the
5 exact settlement amounts or the individualized settlement
6 amount for each person, which we prefer, because that's
7 information we can get.

8 The Defendants didn't want to provide that -- the
9 information necessary to do that earlier than they're otherwise
10 obligated to, we could include an average settlement amount and
11 say that the Court has not approved the settlement yet, but if
12 it does, that the average settlement will be X dollars based on
13 the number of work weeks worked during the relevant period.
14 And you'll find out what your share will be once and if the
15 settlement is approved.

16 So that would be another way to approach this, but it
17 all comes down to the same point, which is these people are
18 going to be present.

19 Again, they opted in. And if they are making the
20 decision whether to opt-in, they should know everything they
21 can possibly know.

22 And it's not to anybody's detriment having them know
23 that, even though it is to their advantage, which we concede.
24 And don't just concede, but we -- we're happy if they're
25 getting that benefit.

1 And so, as far as any other questions with respect to
2 our position, I'd be glad to answer, but that's pretty much it,
3 so.

4 THE COURT: Yes, the compromise that you've just
5 proposed, where you would provide an average settlement amount,
6 how would that be articulated?

7 Would it be if you worked X number of weeks, this is
8 the average? Or are you just taking the overall average of,
9 you know, based on the fact that there are some Plaintiffs that
10 worked six months and others that worked six years? How would
11 that approximation be communicated?

12 MR. SWARTZ: Well, in my opinion, the best way to do
13 it would be, again, the best way to do it would be just to
14 calculate the actual approximate individualized settlement
15 amounts and put those in.

16 But like the compromise they're proposing could
17 be -- it could be either way. It could be -- it could say that
18 just simply the overall average is approximately \$20,000 per
19 person, which we think at least gives people the understanding
20 this is a significant settlement, that they're reeling in a
21 benefit from this, even though some people will get less and
22 some people will get more.

23 Again, that's not preferable in our view to telling
24 people their individualized approximate amounts, but that's one
25 way to do it.

1 Another way to do it would be to say that we
2 negotiated the settlement where people would recover
3 approximately X dollars per work week during these periods,
4 during this -- during these -- within these dates. And that if
5 the Court approves the settlement, then they will get, you
6 know, approximately that dollar amount per work week.

7 It's not -- that's not preferable again to us,
8 because why not give them individualized numbers if we can it,
9 but again, I'm just offering that because it's something we had
10 discussed with the Defendants. And if they were more inclined
11 to agree to it, maybe that would resolve the dispute, but maybe
12 it wouldn't.

13 THE COURT: Would the Defendant be willing to give up
14 its right to reversion and if the -- if a number were not
15 included and the unclaimed funds could be redistributed to
16 those who opted in previously?

17 MR. YAM: I don't have an answer to that question at
18 this moment. I'd have to confer with my client, because the
19 reversion was contemplated as part of this agreement and I need
20 to have confirmation about an alternative resolution.

21 THE COURT: But the reversion that was originally
22 contemplated was a relatively small reversion, because the
23 original agreement was that the checks would be sent out to
24 these individuals and that's what the parties had agreed to
25 until the Court questioned that approach.

1 So it would only be if someone moved and there was no
2 forwarding address or someone thought, hey, I'd rather be pure
3 and not be involved in a class action settlement, so I'm not
4 going to cash a check for \$20,000. So we were talking about a
5 relatively small amount of money, correct?

6 MR. YAM: Yes.

7 THE COURT: Um --

8 MR. YAM: So the main thing that we would want is
9 that finality. And that's why we had agreed on the nearest non
10 opt-ins and this notice going out.

11 But we -- but again, we're only uncomfortable with
12 the language being in there because the settlement had not been
13 approved yet.

14 Had it been approved, we'd be fine with, you know,
15 the checks going out and all this. But we're just concerned
16 that, you know, if it's not an approved settlement, then we can
17 get, you know, this whole thing could blow up.

18 We just want to make sure that, you know, has been
19 approved by this Court and the Court's comfortable with
20 approving this and give the Defendant finality on the issues
21 laid in this case.

22 So, the reversion, I'd have to get back to the Court,
23 because you know, reversion back and then, going to the other
24 opt-in members, I have not discussed that with my client. And
25 I'm not sure, you know, I'd have to discuss with them before I

1 get back to you on that topic.

2 THE COURT: I am going to reserve decision on the
3 issue about the language to go out in these opt-in notices to
4 the non opt-in New York Plaintiffs.

5 I really want to -- as I said, I've been concerned in
6 this case about preferential treatment to different groups. I
7 raised that at the August proceeding.

8 I've gotten a revised settlement agreement provided
9 to the Court. As I noted at the outset, there's really no
10 explanation provided with it. It's a lengthy document. We
11 raised a number of issues at the August 12th proceeding. I'd
12 like to know how the Court's concerns are addressed.

13 I guess there's one issue we can take off the table
14 because I think it was yesterday I saw the Motion for
15 Substitution came in. And I've reviewed the papers.

16 And although I thought it was a little odd that there
17 was one of the Plaintiffs is the representative of a
18 representative of a former employee, nevertheless, they do
19 seem -- at each step of the way, they seem to be authorized
20 representatives.

21 And the widow of that particular employee, whose name
22 I forget now, had signed the opt-in form. And then, she passed
23 away.

24 And now it's I believe her daughter is a
25 representative of the estate and trust. So having reviewed

1 those documents, I'm prepared to approve the substitution.

2 So that issue need not be addressed, but I really
3 would like to get a marked-up copy that shows where the changes
4 are made.

5 That can come by -- through chamber's email address.
6 If you don't have it, Mr. Proujansky, my law clerk, will
7 provide it to you.

8 And I'd also like something filed on the docket
9 explaining the changes and how those changes address the
10 concerns that the Court expressed.

11 And I think then, once I have a better picture of the
12 overall settlement, then I'll make a determination on this
13 issue about the language in the next proposed round of notices
14 to go out.

15 And before that time, if Defense counsel could speak
16 with Defendant and with Plaintiffs' counsel about the question
17 I raised about the reversion, just to see if that's going to be
18 another moving part, because my purpose and the concern I have
19 is not to create a windfall for the Defendant. That's not what
20 I'm looking to do. I'm concerned about fairness to the various
21 opt-ins vis a vis one another.

22 All right, so how much time do counsel need to
23 provide the additional information that I just requested?

24 MR. STEVENSON: Your Honor, this is a -- this is J.R.
25 Stevenson on behalf of Plaintiffs. If I could just, I wanted

1 to just clarify, do you have the cover letter that we've put
2 forth with the revised settlement agreement that outlines the
3 four issues that the Court had? Because we did include a cover
4 letter --

5 THE COURT: Um --

6 MR. STEVENSON: -- that did break it down and explain
7 what changes were made.

8 THE COURT: Let me just see.

9 MR. STEVENSON: It's Document 242, 242.

10 THE COURT: Yeah, I'm looking, and okay, I apologize,
11 I -- before this proceeding today, I looked at the revised
12 statement and I may have missed that.

13 So I'll review that. So rather than -- if I have any
14 questions after reading it, I will issue another order. So the
15 only thing I'll ask for now is a redline or blackline, whatever
16 the preferred term is, of the revisions.

17 MR. STEVENSON: We'll get that to you today, Your
18 Honor.

19 THE COURT: Okay, do you need the chamber's email
20 address?

21 MR. STEVENSON: Yes, please.

22 THE COURT: All right, I'll ask Mr. Proujansky to
23 send it to you. And --

24 MR. SWARTZ: Your Honor, this is Justin Swartz.

25 THE COURT: Yeah.

1 MR. SWARTZ: I'm sorry, go ahead, I interrupted.

2 THE COURT: No, no, no, go ahead.

3 MR. SWARTZ: I was just going to ask -- thank you. I
4 was just going to ask if the Court would set a deadline for the
5 Defendants to inform the Plaintiffs or the Court with respect
6 to the reversion issue?

7 THE COURT: Mr. Yam, how much time do you need?

8 MR. YAM: Probably by the end of the week.

9 THE COURT: All right, why don't you first speak with
10 Plaintiffs' counsel? Is that going to change the Plaintiffs'
11 position, let me ask, if the Defendant says, okay, we're not
12 asking that all that money be reverted to the Defendants, then
13 what's the Plaintiffs' position?

14 MR. STEVENSON: Your Honor --

15 MR. SWARTZ: Well, our position --- yeah, go ahead.

16 MR. STEVENSON: Go ahead, Justin.

17 MR. SWARTZ: Thank you. This is Justin Swartz. Our
18 position would be the same. I just believe that it's relevant
19 to the Court's consideration of the issue, so that's why I
20 wanted to set a deadline, make sure it happened.

21 THE COURT: Well, it may still be worth having the
22 parties talk with one another. So I will ask Defendants to
23 communicate that to Plaintiffs by the end of this week. And
24 then by next Tuesday, if you could inform the Court where that
25 stands, where those discussions stand?

1 MR. SWARTZ: Thank you, Your Honor.

2 MR. YAM: Thank you, Your Honor.

3 MR. STEVENSON: Thank you.

4 THE COURT: All right, anything else?

5 MR. STEVENSON: Not from the Plaintiffs.

6 THE COURT: All right, I'm going to terminate this
7 call. Everyone please take care and stay safe. Good-bye.

8 MR. YAM: Thank you, bye bye.

9 (Proceedings concluded at 1:36 p.m.)

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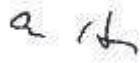
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CERTIFICATE

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

October 28, 2021

Chris Hwang
Transcriber

Date